

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PUBLIC HEARING
amendment of ARM 17.8.505 and) ON PROPOSED AMENDMENT
17.8.514 pertaining to air)
quality operation fees and)
open burning fees) (AIR QUALITY)

TO: All Concerned Persons

1. On _____, 2004, at ____:00 a.m., the Board of Environmental Review will hold a public hearing [in/at address] Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., _____, 2004, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.505 AIR QUALITY OPERATION FEES (1) through (3) remain the same.

(4) Annually, the department shall provide the owner or operator of each facility required to pay an air quality operation fee, with written notice of the amount of the fee and the basis for the fee assessment.

(a) The air quality operation fee is due within 30 days after receipt of the notice, unless the fee assessment is appealed pursuant to ARM 17.8.511. If any portion of the fee is not appealed, that portion of the fee that is not appealed is due within 30 days after receipt of the notice. Any remaining fee that is due after completion of an appeal, is due within 30 days after issuance of the board's decision or within 30 days after issuance of the final decision in any judicial review of the board's decision.

(b) remains the same.

(5) The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted by the facility during the previous calendar year and is an

administrative fee of \$400, plus ~~\$20.61~~ 21.58 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted.

(6) through (9) remain the same.

AUTH: 75-2-111, 75-2-220, MCA

IMP: 75-2-211, 75-2-220, MCA

REASON: Pursuant to 75-2-220, MCA, the Department assesses air quality permit application fees, annual air quality operation fees, and major open burning permit fees. In the aggregate, these fees must be sufficient to cover the Department's costs of developing and administering the permitting requirements of the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the Board.

Air quality operation fees are required for all facilities that hold an air quality permit or that will be required to obtain an air quality permit pursuant to the Title V air quality operating permit program. The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per-ton fee for tons of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted. The amount of money the Department needs to generate through air quality operation fees depends on the legislative appropriation and the amount of carryover from the previous fiscal year. The emission component of the operation fee is also revised to account for changes in the total amount of pollutants emitted in the state in the previous calendar year. This rulemaking would set the air quality operation fees to be billed in calendar year 2004.

Air quality fees billed in 2004 will be based on emissions from calendar year 2003 and will fund the Department's activities in fiscal year 2005.

The legislative appropriation for fiscal year 2004 was \$2,676,705. The amount of the carryover from fiscal year 2003 was \$227,946. The total amount of pollutants reported for calendar year 2003 fees was 103,917 tons, and the per-ton component of the air quality operation fee was \$20.61.

The appropriation for fiscal year 2005 is \$2,706,877, an increase of \$30,172 from last fiscal year. The projected carryover from fiscal year 2004 is \$152,021. The total amount of pollutants reported for 2004 fees is 103,986 tons. Based upon the appropriation, the carryover, the projected permit application fees, and the emission inventory, to cover the Department's costs of developing and administering the air quality permitting program, it is necessary for the Board to increase the per ton charge to \$21.58. Therefore, the Board

is proposing to amend ARM 17.8.505(5) by replacing the per-ton charge of \$20.61 with \$21.58.

In calendar year 2003, the total amount of fees assessed was \$2,342,002. The amount of fees that would be assessed to meet this fiscal year's appropriation would be \$2,463,228, for an increase of \$121,226. In calendar year 2004, fees would be assessed for 550 facilities.

Also, the Board is proposing to make a minor clerical correction to ARM 17.8.505(4)(a) to delete an unnecessary comma. This amendment is not intended to change the meaning of the rule.

17.8.514 AIR QUALITY OPEN BURNING FEES (1) through (3) remain the same.

(4) The air quality major open burning permit application fee shall be based on the actual, or estimated actual, amount of air pollutants emitted by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality major open burning permit required under ARM 17.8.610.

(a) The air quality major open burning permit application fee is the greater of the following, as adjusted by any amount determined pursuant to (4)(b):

(i) a fee calculated using the following formula:

tons of total particulate emitted in the previous
appropriate calendar year,
multiplied by ~~\$16.60~~ 7.67; plus
tons of oxides of nitrogen emitted in the previous
appropriate calendar year,
multiplied by ~~\$4.15~~ 1.92; plus
tons of volatile organic compounds emitted in the
previous appropriate calendar year,
multiplied by ~~\$4.15~~ 1.92; or

(ii) and (b) remain the same.

AUTH: 75-2-111, MCA

IMP: 75-2-211, 75-2-220, MCA

REASON: The Board is proposing to amend ARM 17.8.514 by revising the fee required for major open burning permit applications for fiscal year 2005. Each year, in consultation with the Montana Airshed Group, which includes the major open burners in the state, the Department develops a budget reflecting the cost the Department will incur that fiscal year in operating its Smoke Management Program for major open burners. Fees assessed to individual burners are based upon

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the budget and the burner's actual, or estimated actual, emissions during the previous calendar year in which the burner conducted open burning pursuant to an air quality major open burning permit. For calendar year 2003, the major open burners reported 14,370.0 tons of emissions, compared to 6,129.1 tons for calendar year 2002, or an increase of 8,240.9 tons.

The budget for operating the program for 12 major open burners in fiscal year 2005 is \$45,628, compared to a budget of \$47,737 for fiscal year 2004. The \$2,109 budget decrease is due to expected decreases of \$1,350 for meteorological equipment, \$90 for Kalispell utilities, \$404 for data management staff space rent, \$330 for internet annual expense, and \$1,383 for travel. Anticipated increases include \$639 for personnel services, \$539 for benefits, and \$271 for indirect costs. Due to the increase in the emission inventory and the expected decrease in expenses for the program, it is necessary to decrease the per ton charge. The Board is proposing to decrease the permit fees from \$16.60 per ton of particulate, \$4.15 per ton of oxides of nitrogen, and \$4.15 per ton of volatile organic compounds emitted to \$7.67, \$1.92 and \$1.92, respectively.

The increased amount of emissions generated by the major open burners during calendar year 2003 and the projected \$2,109 budget decrease for fiscal year 2005 would result in a total cumulative decrease in fees of \$2,109. This amount would be distributed among the 12 major open burners.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@state.mt.us, no later than 5:00 p.m., _____, 2004. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. _____, attorney for the Board, has been designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control;

water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@state.mt.us, or may be made by completing a request form at any rules hearing held by the Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

DAVID RUSOFF
Rule Reviewer

BY: _____
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State _____, 2004.